

April 30, 2018

VIA HAND DELIVERY AND ELECTRONIC FILING

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Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, DC 20554

Federal Communications Commission
Office of the Secretary

Re: REQUEST FOR ENHANCED CONFIDENTIAL TREATMENT
In the Matter of beIN Sports, LLC v. Comcast Cable Communications, LLC and Comcast Corporation, MB Docket No. 18-90, File No. CSR-8954-P

Dear Ms. Dortch:

On behalf of Comcast Corporation and Comcast Cable Communications, LLC, enclosed please find a request for enhanced confidential treatment for the above-captioned program carriage complaint proceeding.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,



Michael D. Hurwitz
Counsel for Comcast Corporation and Comcast Cable Communications, LLC

Enclosures

cc: Michelle Carey, Chief, Media Bureau
Mary Beth Murphy, Deputy Chief, Media Bureau
Pantelis Michalopoulos, Steptoe & Johnson LLP, Counsel for beIN Sports, LLC

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Re: **REQUEST FOR ENHANCED CONFIDENTIAL TREATMENT**
In the Matter of beIN Sports, LLC v. Comcast Cable Communications, LLC and Comcast Corporation, MB Docket No. 18-90, File No. CSR-8954-P

Dear Ms. Dortch:

In accordance with 47 C.F.R. § 76.9(d), Comcast Corporation, on behalf of itself and Comcast Cable Communications, LLC (collectively, “Comcast”), submits this request for enhanced confidential treatment for a limited category of materials to be submitted with or referenced in Comcast’s Answer (“Answer”) or in any other Comcast pleadings in the above-captioned program carriage complaint proceeding. The Answer is due on May 14, 2018.

Specifically, Comcast seeks enhanced protection for Comcast’s internal viewership analyses conducted by its Enterprise Business Intelligence (“EBI”) team, including any underlying data, quotations, descriptions, methodologies, or specific information derived from such data (in the aggregate, “EBI Viewership Analyses”), as well as related set-top box viewership data. Comcast also seeks enhanced confidential treatment for certain Affiliation Agreements between Comcast and its affiliated networks NBC Sports Network and Universo. Comcast seeks to limit distribution of the EBI Viewership Analyses and Affiliation Agreements to outside counsel for beIN Sports, LLC (“beIN”) as well as beIN’s outside expert consultants (including employees of such outside counsel and outside experts). The vast majority of the confidential information to be included in Comcast’s Answer will be submitted pursuant to a standard request for confidential treatment submitted simultaneously with the Answer, pursuant to the Commission’s rules.

The EBI Viewership Analyses constitute some of Comcast's most sensitive internal business data. This data is highly proprietary and maintained in the strictest confidence. Among other things, EBI Viewership Analyses contain detailed information regarding the distribution and viewership of specific programming networks, including highly sensitive Comcast set-top box data, as well as projected customer churn and associated lost revenue if Comcast were to drop a network. These analyses in turn inform Comcast's reasoning and strategy during program carriage negotiations. Even inadvertent disclosure of such information would harm Comcast and place it at a significant competitive disadvantage.

Access to EBI Viewership Analyses by video programming vendors or other third parties would have a severely negative impact on Comcast, as there are numerous ways in which Comcast's competitors could use this information to Comcast's disadvantage. This would be highly prejudicial to Comcast and destructive of the competitive process. Indeed, the federal District Court for the District of Columbia has afforded Comcast's EBI Viewership Analyses highly confidential treatment in the recent AT&T and Time Warner trial, and all testimony about the details of such analyses was closed to the public.¹

Similarly, Affiliation Agreements are extremely sensitive documents. These contracts, which contain information that is at the very heart of how Comcast conducts its video distribution business, are highly proprietary and are also maintained in the strictest confidence. They also contain strict confidentiality provisions that prohibit the parties to the contract from divulging the specific contents of the contract, except in narrow exceptional circumstances. As the Commission has consistently recognized, "disclosure of programming contracts between multichannel video program distributors and programmers can result in substantial competitive harm to the information provider."² And, for such reasons, the Commission has often provided parties with the very type of enhanced confidentiality that Comcast seeks here for its Affiliation Agreements.³

Providing enhanced protection for the EBI Viewership Analyses and Affiliation Agreements will *not* prevent beIN from using the information to reply to Comcast's Answer or to otherwise defend the positions beIN has taken in the Complaint. It only means that beIN must do so through its outside counsel and expert consultants.

Based on the foregoing, attached to this letter is a protective order that Comcast respectfully submits should be used to implement the enhanced confidentiality protections discussed herein. This protective order is virtually identical to the protective order the Commission adopted in a 2010 program access

¹ See *United States v. AT&T Inc., DirecTV Group Holdings, LLC, and Time Warner Inc.*, Civil Action No. 1:17-cv-02511 (D.D.C. 2018).

² See, e.g., *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd. 24816 ¶ 61 (1998).

³ See, e.g., *EchoStar Satellite L.L.C. v. Home Box Office; Request for Enhanced Confidential Treatment*, Order, 21 FCC Rcd. 14197 (MB 2006); *Applications for the Consent to the Assignment and/or Transfer of Control of Licenses from Adelphia Communications Corporation and its Subsidiaries to Time Warner Cable, Inc., Comcast, et al.*, Order, 20 FCC Rcd. 20073 (MB 2005); *News Corp., General Motors Corp., and Hughes Electronics Corp.; Order Concerning Second Protective Order*, Order, 18 FCC Rcd. 15198 (MB 2003).

case involving Comcast and WaveDivision Holdings.⁴ The only modifications involve changes to the names of the parties covered by the proposed order, and identification of the items to be granted enhanced confidentiality, and minor formatting and other non-substantive adjustments. Comcast shared this request and proposed order with counsel for beIN last week, and beIN has not expressed any objection to date.

If you have any questions concerning the foregoing, please do not hesitate to contact the undersigned.

Respectfully submitted,



Michael D. Hurwitz
Counsel for Comcast Corporation

cc: Michelle Carey, Chief, Media Bureau
Mary Beth Murphy, Deputy Chief, Media Bureau
Pantelis Michalopoulos, Steptoe & Johnson LLP, Counsel for beIN

⁴ See *WaveDivision Holdings, LLC; Horizon Cable TV, Inc.; Stanford University; and City of San Bruno, California, Complainants v. Comcast Corporation; SportsChannel Pacific Associates; Comcast SportsNet West, Inc.; Comcast Cable Communications, Inc.; Comcast Cable Communications Holdings, Inc.; Comcast Cable Holdings, LLC; and Comcast MO Group, Inc., Defendants Request for Enhanced Confidential Treatment*, Order, 25 FCC Rcd. 2231 (MB 2010) (granting a protective order that establishes enhanced confidentiality for certain information, including "Affiliation Agreements").

PROTECTIVE ORDER

This Protective Order is intended to facilitate and expedite the review of documents submitted in this proceeding that contain trade secrets and commercial or financial information obtained from a person and privileged or confidential. Specifically, this Protective Order seeks to protect Comcast's internal Enterprise Business Intelligence Viewership Analyses ("EBI Viewership Analyses") and the Affiliation Agreements between Comcast and its affiliates NBC Sports Network and Universo. It reflects the manner in which "Highly Confidential Information," as that term is defined herein, is to be treated. The Order is not intended to constitute a resolution of the merits concerning whether any Highly Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 C.F.R. § 0.442.

1. Definitions.

- a. Commission. "Commission" means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority.
- b. Declaration. "Declaration" means Attachment A to this Protective Order.
- c. Highly Confidential Information. "Highly Confidential Information" means the data and other information contained in Stamped Highly Confidential Documents or quoted/derived therefrom that is not otherwise available from publicly available sources or is specifically authorized by the Media Bureau based on a letter specifically describing the information and explaining the need for protection.
- d. Outside Counsel of Record. "Outside Counsel of Record" means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing either beIN Sports, LLC ("Petitioner"); or Comcast Cable Communications, LLC or Comcast Corporation (collectively, "Respondent") in this proceeding. For the avoidance of doubt, Outside Counsel of Record shall exclude any employee of either Petitioner or Respondent.
- e. Stamped Highly Confidential Document. "Stamped Highly Confidential Document" means any EBI Viewership Analyses or program carriage contract (other than those between Petitioner and Respondent), or any part thereof, and any document containing underlying data, quotations from such Highly Confidential materials, descriptions of particular provisions, methodologies, or specific information derived therefrom, that bears the legend (or which otherwise shall have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) "**HIGHLY CONFIDENTIAL – NOT FOR PUBLIC INSPECTION.**" The term "document" means any written, recorded, electronically stored, or graphic material, whether produced or created by the Submitting Party or another person. By designating a document a "Stamped Highly Confidential Document," a Submitting Party signifies that it contains information that the Submitting Party determines in good faith should be subject to protection under FOIA, the Commission's implementing rules, this Protective Order, and the accompanying Order.
- f. Submitting Party. "Submitting Party" means either Petitioner or Respondent to the extent they seek confidential treatment of Highly Confidential Information pursuant to this Protective Order.

2. Claim of Confidentiality. The Commission may, *sua sponte* or upon petition, pursuant to 47 C.F.R. §§ 0.459 & 0.461, determine that all or part of the information claimed as "Highly Confidential Information" pursuant to the definitions in paragraph 1 of this Protective Order is not entitled to such treatment, but prior to making such a determination, the Commission shall afford the Submitting Party notice and opportunity to comment. Any party that did not file the Highly Confidential Information but that has completed the attached Declaration shall have three (3) business days from the date it receives notice that such Highly Confidential Information has been filed to file

a petition opposing such Highly Confidential treatment. The Submitting Party shall have three (3) business days from the date it receives the other party's opposition to file its reply to such opposition.

3. Storage of Highly Confidential Information at the Commission. The Secretary of the Commission or other Commission staff to whom Highly Confidential Information is submitted shall place the Highly Confidential Information in a non-public file. Highly Confidential Information shall be segregated in the files of the Commission, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such Highly Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

4. Permissible Disclosure. Subject to the requirements of paragraph 7, Stamped Highly Confidential Documents may be reviewed by Outside Counsel of Record. Subject to the requirements of paragraph 7, Outside Counsel of Record may disclose Stamped Highly Confidential Documents and other Highly Confidential Information to: (1) outside consultants or experts retained for the purpose of assisting Outside Counsel of Record in this proceeding, *provided that* such outside consultants or experts are not employees of Petitioner or Respondent and are not involved in the analysis underlying the business decisions of any competitor of the Submitting Party nor participate directly in those business decisions; (2) paralegals or other employees of such Outside Counsel of Record not described in clause 3 of this paragraph 4 assisting Outside Counsel of Record in this proceeding; and (3) employees of such Outside Counsel of Record involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to documents connected with this proceeding. Individuals who have obtained access to Stamped Highly Confidential Documents and Highly Confidential Information in accordance with the provisions of this paragraph 4 and paragraph 7 may discuss and share the contents of such Stamped Highly Confidential Documents and Highly Confidential Information with any other person who has also obtained access in accordance with the provisions of this paragraph 4 and paragraph 7, and with the Commission and its staff. Except with the prior written consent of the relevant Submitting Party, or as otherwise provided under this Protective Order, neither a Stamped Highly Confidential Document nor any Highly Confidential Information may be disclosed by parties executing the attached Declaration to any person other than the Commission and its staff.

5. Protection of Stamped Highly Confidential Documents and Highly Confidential Information. Persons described in paragraph 4 shall have the obligation to ensure that access to Stamped Highly Confidential Documents and Highly Confidential Information is strictly limited as prescribed in this Protective Order. Such persons shall further have the obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in this Protective Order; and (2) Stamped Highly Confidential Documents are not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 10 below.

6. Prohibited Copying. If, in the judgment of a Submitting Party, a document contains information so sensitive that it should not be copied by anyone, even given its designation as Highly Confidential Information, it shall bear the additional legend "Copying Prohibited," and no copies of such document, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to Outside Counsel of Record for the Submitting Party.

7. Procedures for Obtaining Access to Stamped Highly Confidential Documents and Highly Confidential Information. In all cases where access to Stamped Highly Confidential Documents and Highly Confidential Information is permitted pursuant to paragraph 4, before reviewing or having access to any Stamped Highly Confidential Documents or Highly Confidential Information, each person seeking such access shall execute the Declaration in Attachment A and file it with the Commission and serve it upon the Submitting Party through their Outside Counsel of Record, so that the Declaration is received by the Submitting Party at least five (5) business days

prior to such person's reviewing or having access to such Submitting Party's Stamped Highly Confidential Documents or Highly Confidential Information. Each Submitting Party shall have an opportunity to object to the disclosure of Stamped Highly Confidential Documents or Highly Confidential Information to any such persons. Any objection must be filed at the Commission and served on Outside Counsel of Record representing, retaining, or employing such person as promptly as practicable after receipt of the relevant Declaration. Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Stamped Highly Confidential Documents or Highly Confidential Information. A Submitting Party shall make available for review the Stamped Highly Confidential Documents of such party at the offices of such party's Outside Counsel of Record.

8. Requests for Additional Disclosure. If any person requests disclosure of Highly Confidential Information outside the terms of this Protective Order, that request will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules, 47 C.F.R. §§ 0.442, 0.461.

9. Use of Highly Confidential Information. Highly Confidential Information (including Stamped Highly Confidential Documents under this Protective Order) shall be used solely for the preparation and conduct of this proceeding as delimited in this paragraph and paragraphs 4, 10, and 11 herein, and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not be used by any person granted access under this Protective Order for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory, or judicial proceedings. This shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Highly Confidential Information nor otherwise learned of its contents. Should the Commission rely upon or otherwise make reference to the contents of any of the Stamped Highly Confidential Documents or Highly Confidential Information in its decision in this proceeding, it will do so by redacting any Highly Confidential Information from the public version of the decision and by making the unredacted version of the decision available only to a court and to those persons entitled to access to Highly Confidential Information under this Protective Order.

10. Pleadings Using Highly Confidential Information. Persons described in paragraph 4 may, in any pleadings that they file in this proceeding, reference the Highly Confidential Information, but only if they comply with the following procedures:

a. Any portions of the pleadings that contain or disclose Highly Confidential Information must be physically segregated from the remainder of the pleadings and filed under seal; to the extent a document contains both Highly Confidential Information and non-Highly Confidential Information, the Submitting Party shall designate the specific portions of the document claimed to contain Highly Confidential Information and shall also submit a redacted version not containing Highly Confidential Information.

b. The portions of pleadings containing or disclosing Highly Confidential Information must be covered by a separate letter to the Secretary of the Commission referencing this Protective Order;

c. Each page of any party's filing that contains or discloses Highly Confidential Information subject to this Order must be clearly marked: **"HIGHLY CONFIDENTIAL – NOT FOR PUBLIC INSPECTION."**

d. The confidential portion(s) of the pleading, shall be served upon the Secretary of the Commission, the Media Bureau, and the Submitting Party. Such confidential portions shall be served under seal, and shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to the Submitting Party as set forth in paragraph 2). A Submitting Party filing a pleading containing Highly Confidential

Information shall also file two redacted copies of the pleading containing no Highly Confidential Information, which copy shall be placed in the Commission's public files. Parties should not provide courtesy copies of pleadings containing Highly Confidential Information to Commission staff unless the Media Bureau so requests. Any courtesy copies shall be submitted under seal.

11. Client Consultation. Nothing in this Protective Order shall prevent or otherwise restrict Outside Counsel of Record from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Stamped Highly Confidential Documents or Highly Confidential Information; *provided, however*, that in rendering such advice and otherwise communicating with such client, Outside Counsel of Record shall not disclose Stamped Highly Confidential Documents or Highly Confidential Information.

12. Violations of Protective Order. Should a person that has properly obtained access to Highly Confidential Information under this Protective Order violate any of its terms, that person shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure or use of Highly Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The violating party shall also immediately notify the Commission and the Submitting Party, in writing, of the identity of each party known or reasonably suspected to have obtained the Highly Confidential Information through any such disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Outside Counsel of Record from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Highly Confidential Information or other information subject to a protective order in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or equity against any person using Highly Confidential Information in a manner not authorized by this Protective Order.

13. Termination of Proceeding. The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), persons described in paragraph 4 shall destroy or return to the Submitting Party the relevant Stamped Highly Confidential Documents as well as all copies and derivative materials made, and shall certify in a writing served on the Commission and the Submitting Party that no material whatsoever derived from such Stamped Highly Confidential Documents have been retained by any person having access thereto, except that Outside Counsel of Record may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) submitted on behalf of a party. Any Highly Confidential Information contained in any copies of pleadings retained by Outside Counsel of Record to a party or in materials that have been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with this Protective Order unless such Highly Confidential Information is released from the restrictions of this Protective Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction. The provisions of this paragraph 13 regarding the retention of Stamped Highly Confidential Documents and copies of same shall not be construed to apply to the Commission or its staff.

14. No Waiver of Confidentiality. Disclosure of Highly Confidential Information as provided herein by any person shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Highly Confidential Information. Reviewing parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use Highly Confidential Information to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Highly Confidential Information shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

15. Subpoena by Courts, Departments, or Agencies. If a court or a federal or state department or agency issues a subpoena or orders production of Stamped Highly Confidential Documents or Highly Confidential

Information that a party has obtained under terms of this Protective Order, such party shall promptly notify each Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court, department, or agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Stamped Highly Confidential Document or Highly Confidential Information.

16. Additional Rights Preserved. The entry of this Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary or to the rights of parties executing the attached Declaration to request further or renewed disclosure of Highly Confidential Information.

17. Effect of Protective Order. This Protective Order constitutes an Order of the Commission and an agreement between the party executing the attached Declaration and the Submitting Party.

18. Authority. This Protective Order is issued pursuant to Sections 4(i) and 4(j) of the Communications Act as amended, 47 U.S.C. §§ 154(i), (j) and 47 C.F.R. § 0.457(d) and Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4).

ATTACHMENT A

DECLARATION

I, _____, hereby declare under penalty of perjury that I have read the Protective Order that has been entered by the Commission in this proceeding, and I understand it. I agree to be bound by its terms pertaining to the treatment of Highly Confidential Information submitted by parties to this proceeding and that I shall not disclose or use Stamped Highly Confidential Documents or Highly Confidential Information except as allowed by the Protective Order.

Without limiting the foregoing, to the extent that I have any employment, affiliation, or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any Highly Confidential Information obtained as a result of the Protective Order is due solely to my capacity as (1) Outside Counsel of Record or (2) other person described in paragraph 4 of the foregoing Protective Order, and that I will not use such Highly Confidential Information in any other capacity; nor will I disclose such Highly Confidential Information except as specifically provided in the Protective Order.

I acknowledge that it is my obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in the Protective Order; and (2) Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Protective Order, and I certify that I have verified that there are in place procedures, at my firm or office, to prevent unauthorized disclosure of Stamped Highly Confidential Documents or Highly Confidential Information.

I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that this Protective Order is also a binding agreement between the undersigned and the Submitting Party.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

(signed) _____

(printed name) _____

(title) _____

(employer) _____